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From: CN=Phil North/OU=R10/O=USEPA/C=US
Sent: Wed 8/18/2010 8:27:10 PM
Subject: Fw: Excerpts from the preamble to the 404c regs relevant to our Bristol Bay situation

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"To protect your rivers, protect your mountains."
----- Forwarded by Phil North/R10/USEPA/US on 08/18/2010 12:25 PM -----

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Date: 08/18/2010 11:25 AM
Subject: Re: Excerpts from the preamble to the 404c regs relevant to our Bristol Bay situation

Thanks Phil.... very helpful

Rick Parkin
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From: Phil North/R10/USEPA/US
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Date: 08/17/2010 03:57 PM
Subject: Excerpts from the preamble to the 404c regs relevant to our Bristol Bay situation

To facilitate understanding of EPA's intention in promulgating regs under CWA 404(c) below are some relevant excerpts from the preamble to the regs.

From the preamble to the proposed regulations FR, Vol 44, No. 50, March 13, 1979
"This proposed determination does not represent a judgement that discharge of dredged or fill material will result in unacceptable adverse effects; it merely means that the Regional Administrator believes that the issue should be explored."

From the preamble to the Rule FR Vol. 44, No. 196, October 9, 1979
"EPA also feels that there are strong reasons for including this pre-permit authority in the present regulations. Such an approach will facilitate planning by developers and industry. It will eliminate

frustrating situations in which someone spends time and money developing a project for an inappropriate site and learns at an advanced stage that he must start over. In addition, advanced prohibition will facilitate comprehensive rather than piecemeal protection of wetlands."

"One commenter said that pre-permit actions were inappropriate because it would be impractical to identify unacceptable adverse effects before a specific discharge is proposed. At least in theory, there are instances where a site may be so sensitive and valuable that it is possible to say that any filling of more than X acres will have unacceptable adverse effects." (My editorial: - or any excavation of acid generating rock.)

"On the other hand, EPA recognizes that where possible it is much preferable to exercise this authority before the Corps or state has issued a permit, and before the permit holder has begun operations."

"This policy is based on both concern for the plight of the applicant, and a desire to protect the site before any adverse impacts occur."

"The word "could" is appropriate for the early stage because the preliminary determination merely represents a judgment that the matter is worth looking into."

"While EPA has used the word "would" for the later stages in the proceedings, it is important to note that absolute certainty is not required."

"Because 404(c) determinations are by their nature predictions of future impacts, what is required is a reasonable likelihood that unacceptable adverse effects will occur - not absolute certainty but more than mere guesswork."

"Moreover, unlike the Corps, EPA can use 404(c) to protect the water before someone requests a discharge permit (e.g. before the Corps is involved)."

"This proposed determination does not represent a judgement that discharge of dredged or fill material will result in unacceptable adverse effects; it merely means that the Regional Administrator believes that the issue should be explored."

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